

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON/SEIU LOCAL 1948,)	DIVISION ONE
)	
Appellant,)	No. 64933-7-I
)	
v.)	UNPUBLISHED OPINION
)	
WASHINGTON STATE LABOR RELATIONS)	
OFFICE, a division of the OFFICE OF)	
FINANCIAL MANAGEMENT,)	
)	
Respondent.)	FILED: May 3, 2010
_____)	

Dwyer, C.J. — A court may issue a declaratory judgment only where a justiciable controversy exists between adverse parties. Because the repudiation of the parties' collective bargaining agreements herein required the parties to begin all aspects of contract negotiations anew, their underlying dispute as to the validity of certain provisions in the nullified agreements became moot, requiring dismissal for lack of a justiciable controversy. Accordingly, we affirm.

I

In the late summer and in the early fall of 2008, the Public School Employees of Washington/Service Employees International Union, Local No. 1948 (PSE) negotiated

and executed collective bargaining agreements for the 2009 to 2011 biennium on behalf of employees of Western Washington University (Western) and employees of Central Washington University (Central) with the universities. The Washington Labor Relations Office (LRO), a division of the Washington State Office of Financial Management (OFM)—the state budget agency—represented Western in the negotiations. A law firm represented Central.¹

The agreements shared several provisions in common that exempted certain types of employment-related disputes from the grievance procedures established by the agreements (the exemption provisions). With respect to the universities' classification of employee job positions, the agreements provided that the universities would abide by the Washington State Department of Labor's classification plan for state employee job positions. In addition, the agreements provided that any appeal from a classification plan would not be subject to the grievance procedures uniquely created in the agreements but, rather, would proceed according to procedures and standards set forth in the state administrative code, Title 357 WAC. Further, the agreements provided that certain actions related to employee discipline would be exempt from the grievance procedures. Neither oral reprimands of employees nor the specific content of employee performance evaluations would be subject to the grievance procedures established under the agreements.

¹ An institution of higher education may either (1) negotiate a collective bargaining agreement itself through its governing board or a board-designated representative or (2) have the governor or the governor's designee—herein, LRO—conduct negotiations on its behalf. See RCW 41.80.010(4).

On August 6, 2008, before the parties had completed negotiations and executed the agreements, PSE filed a complaint for declaratory judgment and injunctive relief against LRO,² challenging the validity of the exemption provisions. It sought a declaration that the exemption provisions violate the provision of the Personnel System Reform Act of 2002, chapter 41.80 RCW, which mandates that collective bargaining agreements contain grievance procedures culminating in binding arbitration of all disputes concerning interpretations of the agreements and that disciplinary actions of employees be processed entirely under procedures set forth in the agreements. See RCW 41.80.030(2).³ PSE also sought to enjoin LRO from including these and similar exemption provisions both in the collective bargaining agreements that the parties were in the process of negotiating and in future agreements. Although PSE disputed the validity of the exemption provisions, it ultimately ratified the proposed agreements containing them.

After the collective bargaining agreements were executed, they were submitted to OFM for budgetary review and approval pursuant to RCW 41.80.010(3).⁴ On

² PSE did not name Central or Central's bargaining representative in the complaint. However, LRO had represented Central in a previous round of negotiations.

³ RCW 41.80.030(2) provides, in full:

A collective bargaining agreement shall contain provisions that:

(a) Provide for a grievance procedure that culminates with final and binding arbitration of all disputes arising over the interpretation or application of the collective bargaining agreement and that is valid and enforceable under its terms when entered into in accordance with this chapter; and

(b) Require processing of disciplinary actions or terminations of employment of employees covered by the collective bargaining agreement entirely under the procedures of the collective bargaining agreement. Any employee, when fully reinstated, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, and retirement and federal old age, survivors, and disability insurance act credits, but without back pay for any period of suspension.

⁴ RCW 41.80.010(3) provides, in full:

December 17, 2008, OFM determined that the agreements were not financially feasible. In so doing, OFM effectively repudiated the agreements, sending the parties back to the negotiating table and leaving them free to reopen any part of the agreements in new negotiations. PSE has neither challenged OFM's determination nor disputed that the parties were free to start the entire collective bargaining process anew after OFM made its determination.

Despite OFM's repudiation of the collective bargaining agreements, PSE pressed forward with its complaint for declaratory and injunctive relief. The parties subsequently filed cross-motions for summary judgment. The trial court granted LRO's motion and denied PSE's. It entered summary judgment of dismissal, citing two alternative bases for its ruling: (1) a justiciable controversy does not exist, and (2) the exemption provisions do not violate RCW 41.80.030(2). PSE appeals.

II

The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

- (a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and
- (b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

PSE contends that a justiciable controversy exists as to the validity of the exemption provisions. We disagree.

Pursuant to the Uniform Declaratory Judgments Act (UDJA), chapter 7.24 RCW, a contracting party or a party whose rights are affected by a statute may obtain a declaratory judgment as to the validity of a contract or the scope of its legal rights. RCW 7.24.020. The UDJA empowers courts to “settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” RCW 7.24.120. Although the UDJA is “remedial,” RCW 7.24.120, and should be liberally construed, Clallam County Deputy Sheriff’s Guild v. Bd. of Clallam County Comm’rs, 92 Wn.2d 844, 848, 601 P.2d 943 (1979), “a party must satisfy certain threshold requirements before obtaining declaratory relief.” Bloome v. Haverly, 154 Wn. App. 129, 140, 225 P.3d 330 (2010).

A court may grant a request for declaratory relief only if a justiciable controversy exists between the parties. Bloome, 154 Wn. App. at 140 (citing Osborn v. Grant County, 130 Wn.2d 615, 631, 926 P.2d 911 (1996)). A justiciable controversy is

“(1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.”

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (quoting Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). This

requirement prevents a party from obtaining relief on hypothetical, speculative, or premature claims. Where these elements are not satisfied, we risk issuing a prohibited advisory opinion. Bloome, 154 Wn. App. at 141 (quoting Branson v. Port of Seattle, 152 Wn.2d 862, 877, 101 P.3d 67 (2004)).⁵

The elements required for a justiciable controversy to exist herein are not satisfied. By rejecting the collective bargaining agreements, OFM rendered moot PSE's claims that the agreements violate RCW 41.80.030(2). PSE acknowledges that OFM's rejection of the agreements forced the parties to return to the negotiating table, where PSE was free to reopen all or part of the agreements or to request the involvement of a third party.⁶ There is no contention that the parties were either bound by any term contained in the repudiated agreements or barred from negotiating terms different from those contained in the repudiated agreements. Although PSE asserts that LRO was resolute that any agreement for the universities must contain the disputed provisions, it is speculative as to whether a future agreement will necessarily contain similar provisions.

In essence, PSE seeks an advisory opinion. There are no actual contractual terms for a court to declare valid or invalid. Any declaration as to the validity of a

⁵ An exception to the justiciable controversy requirement exists only in "rare occasions where the interest of the public in the resolution of an issue is overwhelming." To-Ro, 144 Wn.2d at 416 (quoting In re Disciplinary Proceeding Against Deming, 108 Wn.2d 82, 122–23, 736 P.2d 639, 744 P.2d 340 (1987) (Utter, J., concurring)). PSE does not argue that this exception applies.

⁶ We note that the Personnel System Reform Act anticipates that negotiating parties might fail to reach a collective bargaining agreement and provides procedures for resolving an impasse in negotiations, including the appointment of a third party mediator and fact finder. See RCW 41.80.090. There is no indication that PSE sought to avail itself of this procedure or that it filed an unfair labor practices claim concerning LRO's alleged insistence on the exemption provisions.

repudiated contractual term would be divorced from an actual dispute. Such an advisory opinion is prohibited. To-Ro Trade Shows, 144 Wn.2d at 417 (quoting Seattle Sch. Dist. No. 1 v. State, 90 Wn.2d 476, 490, 585 P.2d 71 (1978); Diversified Indus. Dev. Corp., 82 Wn.2d at 815). The trial court did not err.

Affirmed.

Dwyer, C. S.

WE CONCUR:

Leach, A.C.J.

Meyer, J.P.T.